

REMARKS

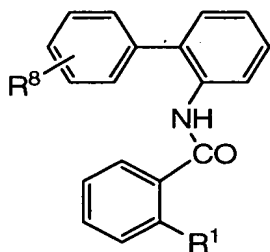
Applicants have canceled Claims 54-59, 61-67, 69-71, 73-75, and 77-79. Applicants' claims are now limited to embodiments in which the biphenyl moiety of the biphenylbenzamide derivatives have at least two R³ substituents in the distal benzene ring (and, as previously pointed out by Applicants, no substituents on the proximate benzene ring). The requirement of at least two substituents in the distal benzene ring is discussed in more detail below.

Applicants have also added new Claims 80 and 81 dependent on Claim 72 to specify some of the microorganisms identified in the specification at page 4, line 27, through page 5, line 21 (more specifically, species identified in canceled Claim 54 plus *Podosphaera* and *Alternaria* species), and page 5, line 23, through page 6, line 26, and Example E at page 60 (more specifically, species identified in canceled Claim 58 plus specific *Podosphaera* and *Alternaria* species). If the claims are deemed allowable, Applicants suggest placing the new claims immediately after Claim 72.

Rejection under 35 U.S.C. 103

Claims 54-79 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of U.S. Patent 5,589,493 ("Eicken et al") and JP 2001-302605. Applicants respectfully traverse.

As discussed in Applicants' previous Amendment dated April 20, 2006, Eicken et al discloses, inter alia, 2-aminobiphenyl derivatives of the following formula



in which R¹ can be methyl, trifluoromethyl, chlorine, bromine, or iodine, and R⁸ can be C₁-C₄-alkyl, C₁-C₄-alkoxy, C₁-C₄-alkylthio, or halogen. See previous Amendment at page 6. Although Eicken et al refers to other phytopathogenic fungi, the clear emphasis is on treatment of *Botrytis*-infected plants. No data for organisms other than *Botrytis* are provided in Eicken et al. Applicants maintain that Eicken et al would not suggest the compounds of their claims in which the biphenyl moiety of the

biphenylbenzamide derivatives have at least two R³ substituents in the distal benzene ring.

As in previous Office Actions, the present Office Action relies on the JP '605 patent for disclosure of compounds in which the distal benzene ring can have more than one substituent, as well as the factually unsupported equivalence of compounds in which the distal benzene ring can be mono-, di-, or trisubstituted. Applicants again point out that the JP '605 patent discloses compounds in which the proximal benzene ring must always be substituted and maintain that nothing in the JP '605 patent would suggest compounds in which the proximal benzene ring bears no substituent as required by Applicants.

The Office Action provides no suggestion that these disparate structural features would be expected to share activity profiles. For this reason alone, Applicants maintain that their invention as now claimed is patentably distinct from the teachings of the cited references. Furthermore, Applicants presented at least one set of data in their specification showing the significance of multiple substitution in the distal benzene ring (see Example D, including Table D, at pages 58-59) and now provide further data in the form of a Declaration under 37 CFR 1.132 of Dr. Ulrike Wachendorff-Neumann (one of the inventors) that also show the significance of multiple substitution in the distal benzene ring in other biological tests. More specifically, in the *Pyrenophora teres* test described in Use Example D of the specification, the dichloro-substituted compound of Example 4 exhibited a greater protective effect (i.e., 100%) than the meta-chloro-substituted compound of Example 7 (i.e., 90%) at the same application rate. In the *Podosphaera* test described in the first example of the Declaration, the dichloro-substituted compound of Example 4 exhibited a dramatically greater protective effect (i.e., 74%) than both the para-chloro-substituted compound of Example 1 (i.e., 10%) and the meta-chloro-substituted compound of Example 7 (i.e., 9%) at 1 ppm. Similarly in the *Alternaria* test described in the second example of the Declaration, the dichloro-substituted compound of Example 4 exhibited a considerably greater protective effect (i.e., 96%) than both the para-chloro-substituted compound of Example 1 (i.e., 68%) and the meta-chloro-substituted compound of Example 7 (i.e., 78%) at 10 ppm. Applicants submit that the JP '605 patent would not lead those skilled in the art to expect any differences in activity among compounds in which the proximal benzene ring is

mono-, di-, or trisubstituted, much less that disubstituted compounds would exhibit such enhanced activity.

Applicants therefore respectfully submit that the combined teachings of Eicken et al and JP 2001-302605 would not render obvious their claimed compounds or their uses.

In view of the preceding amendments and remarks, allowance of the claims is respectfully requested.

Respectfully submitted,

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